REPORT

OF THE

SECRETARY OF WAR;

BEING PART OF

THE MESSAGE AND DOCUMENTS

COMMUNICATED TO THE

TWO HOUSES OF CONGRESS

AT THE

BEGINNING OF THE FIRST SESSION OF THE FIFTIETH CONGRESS.

IN FOUR VOLUMES.

VOLUME II.

PART 3.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1887.

41ST CONGRESS, 2d Session. SENATE. REPORT No. 131.

IN THE SENATE OF THE UNITED STATES.

APRIL 27, 1870.—Ordered to be printed.

Mr. MCDONALD made the following

REPORT.

[To accompany bill S. No. 679.]

The Committee on Territories, to whom was referred S. bill No. 679, respectfully beg leave to submit the following report:

This bill is in all material respects in conformity to the treaties with the Choctaw and Chickasaw, Creek, Seminole, and Cherokee Indian tribes; it contemplates consolidating these tribes under a territorial government, with the name of the "Territory of Ok-la-ho-ma." Ok-la-ho-ma is a Choctaw word, signifying "the home of the Red Man;" and besides being eminently appropriate in this instance, it is specially provided in the eighth article of the Choctaw and Chickasaw treaty of 1866 that such shall be the name of the Territory when organized.

The eighth article of the Choctaw and Chickasaw treaty has been the standard adopted in drawing the bill.

That no one may question this statement, said article is herewith submitted in full:

ARTICLE VIII. The Choctaws and Chickasaws also agree that a council, consisting of delegates elected by each nation or tribe lawfully resident within the Indian Territory, may be annually convened in said Territory, to be organized as follows:

1. After the ratification of this treaty, and as soon as may be deemed practicable by the Secretary of the Interior, and prior to the first session of the said assembly, a census of each tribe lawfully resident in said Territory shall be taken, under the direction of the superintendent of Indian affairs, by competent persons to be appointed by him, whose compensation shall be fixed by the Secretary of the Interior, and paid by the United States.

2. The council shall consist of one member from each tribe or nation whose population shall exceed five hundred, and an additional member for each one thousand Indians, native or adopted, or each fraction of a thousand greater than five hundred, being members of any tribe lawfully resident in said Territory, and shall be selected by the tribes or nations, respectively, who may assent to the establishment of said general assembly; and if none should be thus formally selected by any nation or tribe, it shall be represented in said general assembly by the chief or chiefs and headmen of said tribes, to be taken in the order of their rank, as recognized in tribal usage, in the number and proportion above indicated.

3. After the said census shall have been taken and completed, the superintendent of Indian affairs shall publish and declare to each tribe the number of members of said council to which they shall be entitled under the provisions of this article; and the persons so to represent the said tribes shall meet at such time and place as he shall designate; but thereafter the time and place of the sessions of the general assembly shall be determined by itself: *Provided*, That no session in any one year shall exceed the term of thirty days: *And provided*, That the special sessions may be called whenever, in the judgment of the Secretary of the Interior, the interests of said tribes shall require it.

4. The general assembly shall have power to legislate upon all subjects and matters pertaining to the intercourse and relations of the Indian tribes and nations resident in said Territory; the arrest and extradition of criminals escaping from one tribe to

another; the administration of justice between members of the several tribes of the said Territory, and persons other than Indians and members of said tribes and nations; the construction of works of internal improvement, and the common defence and safety of the nations of the said Territory. All laws enacted by said council shall take effect at the times therein provided, unless suspended by the Secretary of the Interior, or the President of the United States. No law shall be enacted inconsistent with the Constitution of the United States, or the laws of Congress, or existing treaty stipulations with the United States; nor shall said council legislate upon matters pertaining to the legislative, judicial, or other organization, laws, or customs of the several tribes or nations, except as herein provided for.

5. Said council shall be presided over by the superintendent of Indian affairs, or, in case of his absence from any cause, the duties of the superintendent enumerated in this article shall be performed by such person as the Secretary of the Interior shall indicate.

6. The Secretary of the Interior shall appoint a secretary of such council, whose duty it shall be to keep an accurate record of all the proceedings of said council, and to transmit a true copy thereof, duly certified by the superintendent of Indian affairs, to the Secretary of the Interior, immediately after the sessions of said council shall terminate. He shall be paid five hundred dollars as an annual salary by the United States.

7. The members of the said council shall be paid by the United States four dollars per diem while in actual attendance thereon, and four dollars mileage for every twenty miles going and returning therefrom by the most direct route, to be certified by the secretary of said council and the presiding officer.

8. The Choctaws and Chickasaws also agree that a court or courts may be established in said Territory with such jurisdiction and organization as Congress may prescribe: *Provided*, That the same shall not interfere with the local judiciary of either of said nations.

9. Whenever Congress shall authorize the appointment of a delegate from said Territory, it shall be the province of said council to elect one from among the nations represented in said council.

10. And it is further agreed that the superintendent of Indian affairs shall be the executive of the said Territory, with the title of "Governor of the Territory of Ok-la-ho-ma;" and that there shall be a secretary of the said Territory, to be appointed by the said superintendent; that the duty of the said governor, in addition to those already imposed on the superintendent of Indian affairs, shall be such as properly belong to an executive officer charged with the execution of the laws which the said council is authorized to enact under the provisions of this treaty; and that for this purpose he shall have authority to appoint a marshal of said Territory, and an interpreter; the said marshal to appoint such deputies, to be paid by fees, as may be required to aid him in the execution of his proper functions, and be the marshal of the principal court of said Territory that may be established under the provisions of this treaty.

11. And the said marshal and the said secretary shall each be entitled to a salary of five hundred dollars per annum, to be paid by the United States, and such fees in addition thereto as shall be established by said governor, with the approbation of the Secretary of the Interior, it being understood that the said fee lists may at any time be corrected and altered by the Secretary of the Interior, as the experience of the system proposed herein to be established shall show to be necessary, and shall in no case exceed the fees paid to marshals of the United States for similar services. The salary of the interpreter shall be five hundred dollars, to be paid in like manner by the United States.

12. And the United States agree that in the appointment of marshals and deputies, preference, qualifications being equal, shall be given to competent members of the said nations, the object being to create a laudable ambition to acquire the experience necessary for political offices of importance in the respective nations.

13. And whereas it is desired by the said Choctaw and Chickasaw nations that the said council should consist of an upper and lower house, it is hereby agreed that, whenever a majority of the tribes or nations represented in said council shall desire the same, or the Congress of the United States shall so prescribe, there shall be, in addition to the council now provided for, and which shall then constitute the lower house, an upper house, consisting of one member from each tribe entitled to representation in the council now provided for, the relations of the two houses to each other being such as prevail in the States of the United States; each house being authorized to choose its presiding officer and clerk to perform the duties appropriate to such offices; and it being the duty, in addition, of the clerk of each house to make out and transmit to the territorial secretary fair copies of the proceedings of the respective houses, immediately after their respective sessions, which copies shall be dealt with by the said secretary as is now provided in the case of copies of the proceedings of the council mentioned in this act; and the said clerks shall each be entitled to the same per diem as members of the respective houses, and the presiding officers to double that sum.

Thus it will be seen that the legislation proposed by the bill is expressly authorized by the above article of the Choctaw and Chickasaw treaty; and article 10 of the Creek, article 12 of the Cherokee, and article 7 of the Seminole treaties, all made in the year 1866, make substantially the same provisions as the said eighth article of the Choctaw and Chickasaw treaty.

It was found impossible to make a general bill accord in every respect with *all* the treaties: as, for instance, the fourth section of the eighth article of the Choctaw and Chickasaw treaty provides that the legislative council shall be presided over by the "*superintendent of Indian affairs*," who is to be styled the governor of the Territory of Ok-la-ho ma; while the fourth section of the twelfth article of the Cherokee treaty of 1866 provides that such "*council shall be presided over by such person as may be designated by the Secretary of the Interior.*"

So, in regard to other matters not more important, it was found impossible to reconcile all the treaties.

The treaties provide that the superintendent of Indian affairs shall be *ex officio* governor, while the bill makes the governor *ex officio* superintendent—a distinction without a difference.

The treaties limit the duration of the legislative council to forty days for the first, and thirty days for all subsequent sessions; while the bill extends the time to sixty and forty days.

In all material respects the bill is specially provided for, almost word for word, by the treaties before mentioned. The welfare of the Indians and the interests of the government require its speedy passage.

In addition to the specific authority for the legislation proposed by this bill, in article 8 of the Choctaw and Chickasaw treaty, there is a general authority given in the treaties of 1866 with the before-mentioned tribes. To illustrate, we will take the seventh article of the Choctaw and Chickasaw treaty of 1866, which reads as follows:

> The Choctaws and Chickasaws agree to such legislation as Congress and the President of the United States may deem necessary for the better administration of justice, and the protection of the rights of persons and property within the Indian Territory: *Provided, however,* such legislation shall not in anywise interfere with or annul their present tribal organizations, or their respective legislatures or judiciaries, or the rights, laws, privileges or customs of the Choctaw and Chickasaw nations respectively.

Similar provisions are made in other treaties. Article 7 of the Cherokee treaty of 1835 provides as follows:

> ARTICLE 7. The Cherokee nation, having already made great progress in civilization, and deeming it proper that every proper and laudable inducement should be offered to their people to improve their condition, as well as to guard and secure, in the most effectual manner, the right guaranteed to them in this treaty, and with a view to illustrate the liberal and enlarged policy of the government of the United States toward the Indians in their removal beyond the territorial limits of the States, *it is stipulated that they shall be entitled to a delegate in the House of Representatives of the United States whenever Congress shall make provision for the same.*

Thus it will be seen that at that early day, thirty-five years ago, both Congress and the Cherokees contemplated the early establishment of some sort of territorial government, at least over the Cherokee nation. It is unfortunate, both for the Indians and the country, that this design was not carried out at the time. It would probably have avoided many complications injurious to both, and placed the Indians far in advance of their present status, both as regards population and civilization.

It is clear, in the light of history, that the civilized nations of the Indian country, either by contact and association with their barbarous brethren of the savage tribes, or from some other cause or causes, have deteriorated in enlightenment in the last quarter of a century, while at

the same time they have decreased in population. They are now fitted for citizenship, at least a very large proportion of them, and should be prepared for and admitted to its rights at the earliest practicable period. It is in consonance with the new policy of the government, born of the war and matured by the fifteenth amendment, that no alien race shall exist upon our soil; all shall be citizens irrespective of race, color, or previous condition of servitude.

It is a part of the inexorable logic of the times that the Indian must adapt himself to the rights and duties of citizenship. He must wield the franchise and fulfill the obligations imposed thereby, otherwise he will gradually disappear as the waste soil becomes more and more absorbed by the increasing necessities of agriculture.

These Indians are deserving of better things; they have capabilities which, in the new order of things, will be useful to their race and to the country which adopts and protects them.

The Territory of Ok-la-ho-ma, as bounded by this bill, embraces about 69,000 square miles, or 44,160,000 acres. The population of the Territory does not exceed 85,000 souls, of which only 20,000 are uncivilized. The Cherokee, Creek, Choctaw, Chickasaw, and Seminole nations together with the tribes confederated with them under existing treaties, number about 65,000 souls, have regularly organized government, a written language, with written constitutions and codes of laws. In the main, they are educated and intelligent, and the government should cease to treat them as wards.

It is a measure of protection to them. They are now the prey of attorneys and claim agents in all their dealings with the government, and without weight or influence in all matters appertaining to their interests. These attorneys, to increase the weight of their influence, and the consequent value of their services, make the Indians believe that the government is their natural enemy, seeking to take every advantage of their necessities. And thus, year by year, distrust grows into animosity, and animosity becomes embittered; while the revenue of the nations is transferred little by little to the pockets of those who have rendered them the worst possible disservice.

Under the policy established by this bill the agents for these nations before mentioned, and the large delegations yearly sent to Washington on business for their respective tribes, together with the co-operating army of attorneys, would be wholly dispensed with, and all business appertaining to these people would be transacted by their delegate in Congress. Thus, considering the question in the light of economy, both for the government and the Indians, it is submitted that the bill should become a law.

All the treaties of 1866 authorize Congress to establish United States courts in the Indian country. This bill carries out these treaty stipulations, and for this reason alone, in justice to the Indians, and for the sake of the good faith of the country, the bill should become a law.

As matters now stand, the United States court for the western district of Arkansas has jurisdiction over all this Territory under the act of Congress of June 30, 1834, and the amendments thereto. A large majority of the business of this court comes from the Indian country, while the grand and petit jurors are always selected from the few counties in the State of Arkansas, comprising less than one-tenth of the area of the district. The bill establishes courts in the Territory, and secures the right of the Indians to be tried in their own country by their own countrymen. This is an act of justice which has been too long denied them.

The great extent of this district necessitates the employment of numerous deputy United States marshals, who depend solely upon the fees and mileage in summoning witnesses and traveling with prisoners for their compensation, and, in consequence, cases are sometimes gotten up by deputies for the fees, &c. These expenses are paid by the United States, and it is clear that courts in the Indian country, established at suitable points, would so far lessen the distance of travel as to materially reduce the present expenses of the government on account of the court in Arkansas.

Then as a matter of economy to the government and the Indian nations, as a simple act of justice and fair-play to the Indian, and to carry out in good faith the stipulations of the treaties of 1866, it is urgently recommended that the bill become a law without unnecessary delay.

In the opinion of the committee, the legislation contemplated by the bill will afford ample remedy for serious evils complained of by the Indians; will be a measure of protection fully adequate to their necessities, and will be a large advance toward their complete civilization.

This Territory is well wooded and watered, has a delightful and health-giving climate, possesses a soil of unexampled fertility, and, with a permanent and stable government, such as this bill will insure, there is no reason why Ok-la-ho-ma should not compare favorably with the other Territories of the country, exceeding them all, as it does, in the aggregate of her agricultural and mineral resources.

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